

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.:4:19-CV-10520-TSH

CHARU DESAI,  
Plaintiff,

v.

UMASS MEMORIAL MEDICAL  
CENTER, INC., et al.,  
Defendants.

**SUPPLEMENTAL AFFIDAVIT OF  
REID M. WAKEFIELD, ESQ., IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT BY UMASS  
MEMORIAL MEDICAL CENTER,  
INC., UMASS MEMORIAL  
MEDICAL GROUP, INC., MAX  
ROSEN, M.D., AND STEPHEN TOSI,  
M.D.**

I, Reid M. Wakefield, hereby depose and state as follows:

1. I am employed as an attorney with the law firm Mirick, O'Connell, DeMallie, & Lougee, LLP, and have been retained as defense counsel, along with Robert L. Kilroy, Esq., for Defendants, UMass Memorial Medical Center, Inc., UMass Memorial Medical Group, Inc., Max Rosen, M.D., and Stephen Tosi, M.D., in the above-referenced action.

2. I have personal knowledge of the facts contained within this affidavit.

3. I attest to the following Exhibits, which are attached hereto, as containing true and accurate copies of the documents referenced therein:

4. **Exhibit EE** is a true and accurate copy of the Second Affidavit of Max Rosen, M.D., M.P.H., dated March 3, 2022.

5. **Exhibit FF** is a true and accurate copy of excerpts of the transcript of the deposition of Max Rosen, M.D., taken on May 7, 2021 and June 1, 2021.

6. **Exhibit GG** is a true and accurate copy of the Affidavit of Randa Mowlood, dated March 3, 2022.

7. **Exhibit HH** is a true and accurate copy of excerpts of the transcript of the deposition of James F. Gruden, M.D., taken on August 31, 2021.

8. **Exhibit II** is a true and accurate copy of excerpts of the transcript of the deposition of Charu Desai, M.D., taken on October 22, 2020.

9. **Exhibit JJ** is a true and accurate copy of the Affidavit of Joseph Ferrucci, M.D., dated March 2, 2022.

Signed under pains and penalties of perjury this 17th day of December, 2021.

/s/ Reid M. Wakefield  
Reid M. Wakefield, Esq.

**EXHIBIT EE**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,  
Plaintiff,

v.

UMASS MEMORIAL MEDICAL  
CENTER, INC., et al.,  
Defendants.

**SECOND AFFIDAVIT OF  
MAX ROSEN, M.D., M.P.H.**

I, Max Rosen, M.D., M.P.H, hereby depose and state as follows:

1. I am the Chair of the Department of Radiology for UMass Memorial Health (the "Department"), and in this capacity I have personal knowledge of the facts set forth herein.
2. I was appointed as the Chair of the Department effective September 1, 2012.
3. Jerry Balikian, M.D., was the only radiologist in the Department since I have been Chair who met the criteria to be exempt from call under the call policy, due to his age being over 72, his academic rank of Professor, and his tenure with the Department.
4. Dr. Balikian retired from the Medical Group in 2015 at age 88.
5. Academic time is not provided to members of the Department for teaching responsibilities conducted in the course of routine clinical work, including teaching Radiology residents and/or medical students in the reading room. Every regularly-employed radiologist who holds a UMass Chan Medical School faculty appointment is required to engage in the teaching of medical students as a part of their regular job duties as a member of the faculty of the Medical School.

6. In certain cases, academic time is granted for teaching or educational activities which are substantial and outside of a faculty member's regular job duties, such as giving formal lectures or performing research or mentoring projects with Radiology residents and/or medical students.

7. Every regularly-employed radiologist performs teaching responsibilities in the reading room, but all such radiologists do not receive academic time.

8. No radiologist in the Department has received administrative or academic time for serving on the Quality Improvement Committee, with the exception of Steven Baccei, M.D., who served as the Vice Chair for Quality, Patient Safety and Process Improvement.

9. The percentage of activities allocated between clinical and educational time listed in the Faculty Annual Performance Review forms for clinical staff is a default 75% clinical and 25% educational. Virtually all regularly-employed clinical faculty have the same 75% to 25% allocation on these forms.

10. Edward H. Smith, M.D., was Chair of the Department until approximately 2002.

11. Philip Steeves, M.D., utilized a home workstation beginning in 2017 because he was a per diem employee who worked entirely remotely on an as-needed basis.

12. Carolyn Dupuis, M.D., utilized a home workstation beginning in 2017 because the Department wanted to trial the use of remote workstations for the Emergency Department and she agreed to trial the technology as an ED radiologist. Dr. Dupuis is a female.

13. It was never my practice to offer the role of Division Chief to the most senior radiologist in a division. I have always selected Division Chiefs based on who would be the best person for the job and who would best serve the needs of the Department and the particular subspecialty.

14. At the time the Chief of the Chest Division, Karin Dill, M.D., left employment in 2019, the most senior dedicated chest radiologist in the Department was Marile Barile, M.D. Dr. Barile was born in 1977.

15. The document attached as **Exhibit A** is a redacted summary of data from the quality assurance system, which was obtained and evaluated as a part of a greater review of the quality of Ronald Garrell, M.D., which ultimately led to the termination of his employment.

16. In March of 2018, Charles Cavagnaro, M.D., was the Interim Senior Vice President and Chief Medical Officer of the Medical Center, and attended the March 14, 2018, meeting with Dr. Desai and I, in that capacity.

17. During the time I was Chair, Dr. Desai never physically worked at Marlborough Hospital.

18. The Medical Group has had open requisitions posted for chest radiologists continuously since at least 2016. I have been recruiting chest radiologists constantly over the past several years.

19. In February of 2018, I requested that Dr. Dill review the reads, which comprised almost all x-rays, performed by Dr. Desai for a single day. A concern arose related to a study assigned to Dr. Desai that was read by a resident, and I wanted to evaluate the other reads that were performed that day, particularly those read with a resident. This request to Dr. Dill had nothing to do with the independent review performed on Dr. Desai's CT reads. This review played no role in and had no relationship to my decision to terminate Dr. Desai's employment.

20. In 2018 and 2019, Maria Barile, M.D., earned \$330,000 per year.

21. Brian Brochu, M.D., was paid a higher salary due to his leadership and administrative role with within the Department, which involved additional clinical skills and

responsibilities as well. Dr. Brochu served as the Chief of Radiology for Marlborough Hospital. His duties in this role included managing the Medical Group's services provided to Marlborough Hospital under its services agreement, leading the provision of community radiology services there, collaborating with Marlborough Hospital officials, and overseeing staffing coverage for the reading of studies originating from Marlborough Hospital. Dr. Brochu also performs interventional radiology, including CT and ultrasound-guided procedures, and the insertion of PICC lines.

Signed under pains and penalties of perjury this 3<sup>rd</sup> day of March 2022.

A handwritten signature in blue ink, appearing to read "Max Rosen", is written over a horizontal line. A short horizontal line is positioned to the right of the signature.

Max Rosen, M.D., M.P.H.

**EXHIBIT A**

Count of Accession Number	Column Labels				Grand Total
Row Labels	1	2	3	4	
S. A.	61				61
S. B.	101		7		108
J. B.	35				35
A. B.	125	1	2	4	132
D. B.	16				16
N. B.	5				5
D. B.	116	2			118
S. B.	8	1	1	1	11
B. B.	101	2	2	4	109
C. C.	122		3		125
A. C.	74	2			76
B. C.	208	6	5		219
D. C.	353	5	4	1	363
K. C.	23	1		1	25
S. D.	15				15
C. D.	150				150
Desai, Charu	55	2	2	1	60
K. D.	16				16
S. D.	72				72
C. D.	310	3	3	1	317
J. F.	165		4	3	172
R. G.	342	1	10	6	359
J. G.	203	4	3		210
B. G.	1				1
E. G.	141				141
S. H.	242	4	1		247
M. K.	25				25
A. K.	73	7	2		82
Y. K.	54	6	2	2	64
S. K.	35		1		36
M. K.	110				110
J. L.	119	1			120
R. L.	23	10			33
H. L.	310	6	5	2	323
J. L.	29			1	30
S. M.	139				139
J. M.	174	4	5	1	184
F. M.	74		3		77
A. N.	88				88
K. P.	25		1		26
N. P.	4				4
L. P.	65	3			68
K. R.	37	2	5	2	46
D. R.	9				9

F. R.	215	2	1	218
E. S.	100	1		101
G. S.	81			81
K. S.	98			98
A. S.	37			37
H. S.	108	1	2	111
A. S.	80	1		81
P. S.	80		4	84
P. S.	147			147
D. T.	57	1		58
D. T.	23			23
G. V.	187		1	188
C. W.	192	1	7	200
J. W.	113			113
C. W.	17		1	18
S. W.	4		2	6
S. W.	2		1	3
S. W.	2			2
L. Z.	79	2	2	1
<b>Grand Total</b>	<b>6075</b>	<b>80</b>	<b>91</b>	<b>34</b>
	96.74%	1.27%	1.45%	0.54%
RG	342	1	9	4
	96.07%	0.28%	2.53%	1.12%

RON - UNCORRECTED

95.26%

0.28%

2.79%

1.67%

**EXHIBIT FF**

**In the Matter of:**

*Charu Desai vs*

*UMASS Memorial Medical Center, Inc., et al.*

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*Max P. Rosen, M.D. Vol II*

*June 01, 2021*

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1           Q. And then, in the next paragraph, you state  
2 that you'd like to make him an offer but have not  
3 formally resolved Dr. Desai's employment plan for  
4 9/30/2018. Do you see that?

5           A. Yes.

6           Q. What specifically did you mean in writing  
7 to Ms. Streeter in October of 2017 that you were  
8 planning to resolve Dr. Desai's employment in  
9 September of 2018?

10          A. I'm not sure what Dr. Desai wanted to do.  
11 She had been requesting of me to not take call. I  
12 had been -- I had offered her to go per diem if she  
13 didn't want to take call.

14          Q. And your -- your phrase, planned for  
15 9/30/2018, why was it planned for 9/30/2018 if  
16 Dr. Desai was not sure or you were not sure what  
17 Dr. Desai was going to do?

18          A. September 30th, you know, is the end of the  
19 fiscal year. So all of our budgets are done on a  
20 fiscal year; so just thinking one year versus --  
21 versus the next.

22          Q. Had Dr. Desai mentioned to you at any point  
23 that she was thinking of retiring or no longer  
24 working?

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Max P. Rosen, M.D.  
June 01, 2021

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1           A. She had on multiple occasions asked -- told  
2 me that she didn't want to take call anymore, and I  
3 had offered to her that one option for not taking  
4 call was to be per diem.

5           Q. But Dr. Desai did not say to you at any  
6 point, I plan to resolve my employment by  
7 9/30/2018 --

8           A. No.

9           Q. -- is that correct?

10          A. Correct.

11          Q. And then you actually write, if for some  
12 reason Dr. Desai is still employed after 9/30/2018,  
13 you would make other staffing adjustments so that  
14 the new hires addition to the department would be  
15 staffing neutral, correct?

16          A. Correct.

17          Q. So this actually suggests that -- that  
18 Dr. Desai had -- had no plans to end her employment  
19 on September 30th, 2018?

20          A. If she -- if Dr. Desai was still working, I  
21 would have juggled other FTEs to be able to bring in  
22 another chest radiologist.

23          Q. That wasn't actually my question, though,  
24 Dr. Rosen. My question was: This sentence suggests

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1 that Dr. Desai had no plans to resolve her  
2 employment by 9/30/2018. Wouldn't you agree with  
3 me?

4 MR. WAKEFIELD: Object to the form.

5 You can answer, if you can.

6 A. In working on staffing and budgets, I  
7 always take into account what the overall staffing  
8 of the department is and the total number of FTEs,  
9 and often, if there is a gap in one division, I can  
10 fill that by having some people who work in multiple  
11 divisions shift the work that they do.

12 So there are some people who only work in  
13 one division, for example, in neuroradiology, but  
14 other people who can work in more than one division,  
15 and when I'm looking at the budgeting for the entire  
16 department, I have to think about the total number  
17 of FTEs and where people are working to best meet  
18 the needs of the department.

19 Q. You know, Dr. Rosen, that still does not  
20 answer the question which was about the plan that  
21 you refer to here of Dr. Desai resolving her  
22 employment by September 30th, 2018. Why did you  
23 believe that Dr. Desai planned to resolve her employ  
24 by September 30th, 2018?

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1           A. Because Dr. Desai had been complaining to  
2 me about her work and about not wanting to take  
3 call, and if somebody is no longer taking -- if  
4 somebody switches from an employed position to a per  
5 diem position, then they no longer are taking call,  
6 but that's also a FTE position which is then  
7 available.

8           Q. Right. Did you plan for her to leave by  
9 then?

10          A. No.

11          Q. Why did the word, "planned," come up in  
12 your email to Ms. Streeter?

13          A. It was one of the options that, if Dr.  
14 Desai had stopped her full-time employment or, in  
15 the second paragraph, if another radiologist wasn't  
16 within the department anymore, that there would be  
17 an FTE position to be able to hire somebody in  
18 chest.

19           There are lots of different contingencies  
20 that happen in the department.

21          Q. You --

22          A. Other contingencies are if volume increases  
23 or volume decreases.

24          Q. You referred a minute ago, Dr. Rosen, to

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Max P. Rosen, M.D.  
June 01, 2021

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1 the second paragraph about -- you referred to the  
2 second paragraph, and I believe you suggested,  
3 perhaps, someone else leaving the department. Where  
4 do you see that in the second paragraph?

5 A. Actually, in the third paragraph, make  
6 other adjustments so the new hire would be staffing  
7 neutral.

8 Q. This doesn't say about --

9 A. In any given year -- I'm sorry.

10 Q. This doesn't actually say anything about  
11 anyone else leaving, though. This says, if  
12 Dr. Desai is employed, you would make adjustments so  
13 that the new hires addition to the department would  
14 be staffing neutral, correct?

15 A. In any given year --

16 Q. This is a yes or no question, Dr. Rosen.

17 MR. WAKEFIELD: He's trying explain the --  
18 the nuances.

19 MS. WASHIENKO: Well, if he's --

20 A. In any given year, three to five people  
21 come and go from the department, and part of working  
22 on having an adequately staffed department is to be  
23 able to have identified potential radiologists in  
24 case other people leave in the course of the year.

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1                   It, also, takes over -- at least six months  
2 to bring somebody on board; so there's a lot of  
3 planning and thought that goes into staffing,  
4 whether or not any of those contingencies actually  
5 ever happen.

6                   Q. So, at least as of October 3, 2017, you  
7 were looking to find another radiologist for the  
8 chest division, correct?

9                   A. Yes. We, also, had lots of per diems, as  
10 we've discussed, working in chest, and we'd be much  
11 better off with one fellowship-trained radiologist  
12 as opposed to several per diems sharing the work.

13                  Q. I would...

14                  On the previous page, Dr. Rosen, at the  
15 bottom of the page -- well, let me -- let me -- I  
16 apologize. Going back to the page that's marked  
17 04629, it should be Page 3 or 4 --

18                  A. Okay.

19                  Q. -- you -- you wrote, "Can I go ahead and  
20 make him the offer?" Do you see that?

21                  A. Yes.

22                  Q. Ms. Streeter writes back to you just a few  
23 minutes later at 10:20 a.m. saying, "I don't think  
24 so. Because of your variance, this would need to go

**EXHIBIT GG**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,  
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UMASS MEMORIAL MEDICAL  
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Defendants.

**AFFIDAVIT OF RANDA  
MOWLOOD**

I, Randa Mowlood, hereby depose and state as follows:

1. I am the Senior Academic Administrator for Department of Radiology for UMass Memorial Health (the “Department”), I have served in this role since December 15, 2014, and in this capacity I have personal knowledge of the facts set forth herein.

2. Medical Group radiologists are required to work “call” where they are scheduled to work certain weekends and holidays to ensure coverage for patients every day of the year. The Department has a policy which requires all regularly-employed staff members to provide “call,” a copy of which is attached as **Exhibit A**.

3. This policy is an employment policy and was created by the Department in order to set forth guidelines regarding radiologists taking call.

4. Paragraph 5 of the policy states:

Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:

- Age 72 years.
- Academic rank of full Professor
- 20 years of continuous service to the Department.

5. To my knowledge and belief, the only physician in the Department who met these criteria was Jerry Balikian, M.D., and Dr. Balikian was exempt from taking call because he met the criteria.

6. No other regularly-employed radiologist has been exempt from taking call in the time I worked in the Department.

7. Paragraph 5 of the policy is intended to exempt physicians from call if they meet two of the three criteria listed.

8. Paragraph 5 of the policy is interpreted and applied in the Department as exempting physicians from call if they meet two of the three criteria.

9. Since I have served in my role, bonus eligibility has had no relationship to radiologists taking call or their call schedules.

10. “Senior attending” is not a term that is used for any other purpose in the Department, and physicians are not designated as “Senior attending” for the purposes of compensation, Department policies, or for any other reason.

11. On multiple occasions, Charu Desai, M.D., expressed to me that she should be exempt from performing call due to her longevity with the Department.

12. In response, I informed her that the call policy applies to every radiologist, and that pursuant to policy, she does not meet the criteria to be exempt from call.

13. The Medical Group has had open requisitions posted for chest radiologists continuously since at least 2016.

Signed under pains and penalties of perjury this 3<sup>rd</sup> day of March 2022.

  
Randa Mowlood

**EXHIBIT A**

Revised October 2015

## **CALL AND/OR WEEKEND/HOLIDAY COVERAGE POLICY**

### **PRINCIPLES**

1. Call and/or Weekend/ Holiday Coverage is Division based.
2. The frequency of call and/or Weekend/Holiday duties will be maintained at approximately 1/5 or roughly 10 to 11 weeks or weekends per year. Minor adjustments may be necessary from time to time for Divisions temporarily under or overstaffed at the discretion of the Chair's Office.
3. WRVU's earned during call or weekend/holiday obligation will count for yearend productivity calculation.
4. Call and weekend/holiday schedule will be made by the Division Chief in concert with the Physician Staffing Coordinator. When possible call/weekend/holiday schedule will be done one year in advance at the beginning of each Fiscal Year and follow Departmental guidelines.
5. Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:
  - Age 72 years.
  - Academic rank of full Professor
  - 20 years of continuous service to the Department.

**WEEKEND AND HOLIDAY COVERAGE – 1/5**

**ABDOMINAL IMAGING DIVISION – ON SITE MEMORIAL CAMPUS**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Memorial House Doctor - Contrast Coverage, emergent US and Fluoro  
Responsible for any NVIR procedures at Memorial Campus.  
On Site Chest person will be back-up House Doctor.

Reading Assignments

Adult non ED Abdominal Imaging – All locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not Campus))

**MSK DIVISION – ON SITE SHREWSBURY STREET**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Contrast Monitoring – Shrewsbury Street MR

Reading Assignments

Adult non ED MSK imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

**CHEST DIVISION – ON SITE – MEMORIAL CAMPUS**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Reading Assignments

Adult non ED CHEST imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

**SATURDAY COVERAGE (12/YEAR)**

BREAST DIVISION – ON SITE- MEMORIAL CAMPUS  
8 HOUR SHIFT- with FELLOW

ASSIGNMENT RESPONSIBILITIES: Screening

**CALL 7 DAYS - FRIDAY 5 PM TO FRIDAY 8 AM INCLUDING ON-SITE SAT/SUN/HOLIDAY – 1/5**

PEDIATRIC DIVISION – ON SITE – UNIVERSITY CAMPUS  
8A-5P – SATURDAY/SUNDAY/HOLIDAY  
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)  
All Pediatric Imaging –all locations

Priority

- a. ED-Pedi (Read out resident)
- b. Stats
- c. Inpatient
- d. Carewell Urgent Care: read all prior day's cases, be available for STAT calls
- e. Outpatient

(Each category Prioritized by Date and Time (not location))

NEURORADIOLOGY DIVISION – ON SITE – UNIVERSITY CAMPUS  
8A-5P – SATURDAY/SUNDAY/HOLIDAY  
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)  
All Neuroradiology Imaging –all locations

Priority

- Read out resident
- a. ED-Neuro
- b. Stats
- c. Inpatient
- d. Outpatient

(Each category Prioritized by Date and Time (not location))

**CALL (7 DAYS) ONLY**

VASCULAR DIVISION –ON CALL FOR VIR AND ABDOMINAL\* PROCEDURES  
CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)  
\*All Abdominal Procedures EXCEPT Memorial Campus Saturday/ Sunday/  
Holiday 8A-5)

NEURO INTERVENTIONAL DIVISION –ON CALL FOR PROCEDURES  
CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

**ED Division- ON SITE- University Campus 24/7**

**Mon-Fri Shifts**

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro) Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

- Priority
- a. ED
- b. STATs- All non-neuro including non-ED
  - i. Inpatient
  - ii. Outpatient

*Pediatric cases will be entered as Preliminary by ED resident*

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

- Priority
- a. ED
- b. STATs- All non-ED STATs including Neuro
  - i. Inpatient
  - ii. Outpatient
  - iii. Other backlog in non-STAT, non-ED cases

*Pediatric cases will be entered as Preliminary by ED resident*

*Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only*

**Sat/Sun/Holiday**

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

- Priority
- a) ED
- b) STATs- All non-ED STATs including Neuro
  - i. Inpatient
  - ii. Outpatient
  - iii. Other backlog in non-STAT, non-ED cases

*Pediatric cases will be entered as Preliminary by ED resident*

*Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only*

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital  
Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Priority

- a) ED
- b) STATs- All non-ED STATs including Neuro
  - i. Inpatient
  - ii. Outpatient
  - iii. Other backlog in non-STAT, non-ED cases

*Pediatric cases will be entered as Preliminary by ED resident*

*Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only*

**EXHIBIT HH**

**In the Matter of:**  
*Charu Desai vs*  
*UMASS Memorial Medical Center, Inc., et al.*

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*James F. Gruden, M.D.*

*August 31, 2021*

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James F. Gruden, M.D.  
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1 Q. Right. You don't know how many of the  
2 other -- the others were -- how many other  
3 radiologists were included in "other," right?

4 A. No, I don't.

5 Q. So if the UMass Memorial reviewer, as  
6 we'll use the phrase, did not have this column with  
7 "O" and "CD," she wouldn't have known who the  
8 reviewing radiologists were either, correct?

9 MS. WASHIENKO: Objection.

10 A. Correct, but I don't know what information  
11 she had when she did this review. I don't know  
12 anything about how it was done.

13 Q. And without having -- if the reviewer  
14 didn't know who performed which CT, the reviewer  
15 couldn't have discriminated against Dr. Desai's  
16 reviews, is that right?

17 A. That's correct. I -- if you don't know  
18 who read what case, you can't discriminate against a  
19 reader.

20 Q. Do you know Dr. Desai's race?

21 A. Do I know her what?

22 Q. Her race.

23 A. I do.

24 Q. What is your understanding?

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1 the last -- or the second-to-last page, Section IV  
2 entitled "Expert Opinions." We -- we talked about  
3 your opinions on Dr. Desai's reads, correct?

4 A. Yes.

5 Q. And we talked about your opinions on the  
6 reads by other radiologists, correct?

7 A. Correct.

8 Q. And then so you also provide in the  
9 last paragraph an opinion that "based on my  
10 experience as a radiologist at a major hospital and  
11 the apparent methodology of the instant review  
12 (i.e., that all of the cases were submitted in a  
13 small window in early 2017), I have formed an  
14 opinion to a reasonable degree of certainty, that  
15 the method of peer review used in this case does not  
16 conform to any appropriate or well-known guidelines  
17 for a fair peer review process," is that right?

18 A. Yes.

19 Q. But you don't know anything about how the  
20 underlying review was conducted, right?

21 A. I only know these 50 cases. There may or  
22 may not have been more cases that were analyzed. I  
23 don't know. I only know these 50.

24 Q. But you don't know the purpose of the

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1 review, right?

2 A. I don't.

3 Q. You don't know what led to the decision to  
4 conduct the review?

5 A. I do recall a mention in discussion with  
6 the attorneys that there were -- I believe there  
7 were some complaints about their client.

8 I don't remember from whom or whether it  
9 was from more than one person, but there were some  
10 complaints lodged with the department about her  
11 reads.

12 Q. All right. Do you know how many  
13 complaints?

14 A. I don't know.

15 Q. Do you know what the complaints were  
16 about?

17 A. Just her -- her readings.

18 Q. Okay. Any -- anymore specifics than that  
19 that you're aware of?

20 A. No.

21 Q. And you don't know -- or you mentioned  
22 before you were told who performed the review,  
23 right?

24 A. Yes. Long after I was done.

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1 Q. You don't know that person's  
2 qualifications, right?

3 A. I -- I believe -- I've heard of her, so I  
4 suspect she's a chest radiologist. I think -- I  
5 think she's a chest radiologist. I don't know much  
6 about her other than that.

7 Q. And you don't know if the reviewer knew  
8 the identity of the reading radiologist for each  
9 study at the time the review was conducted, right?

10 A. I don't know.

11 Q. Do you know how the images were selected  
12 for the review?

13 A. No, I don't.

14 Q. And you don't know who selected those  
15 images?

16 A. No.

17 Q. And you don't know which radiologist or  
18 the number of radiologists who performs the reads  
19 which were not done by Dr. Desai, right?

20 A. No, I don't know that information.

21 Q. You don't know why the time period was  
22 selected from which these studies were chosen,  
23 right?

24 A. No.

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1 Q. And you mentioned with respect to the  
2 apparent methodology that all the cases were  
3 submitted in a small window in early 2017. why does  
4 that make a difference?

5 A. Well, first of all, it's not -- it's not  
6 a sustained pattern of bad reads when you're only  
7 looking at one month. I don't know what was  
8 happening with this person during that month.

9 I don't know what her schedule was like,  
10 if she was, you know, overworked or what -- what she  
11 was expecting to double cover in other service. I  
12 don't know anything about what happened in that  
13 one-month period to make a conclusion about  
14 someone's performance.

15 And also, as I think I've mentioned  
16 before, the window, you know, may have been a period  
17 of time when she was covering specific types of  
18 cases that were complicated, like the hospital.

19 She had a lot of complicated cases that I  
20 didn't really see reflected in others, so her  
21 spectrum of clinical practice during that period of  
22 2017 may have been different than it is -- was in  
23 other months. That's -- you know, that's kind of  
24 it.

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1 Q. Okay. And but you don't know the details  
2 there. You don't know whether she had a specific  
3 difference in her duties during that period. You  
4 don't know whether it was normal. You don't know  
5 anything about the answers to those questions that  
6 you just raised, right?

7 A. No, I don't know, and I also don't know  
8 if she was ever previously investigated or if she  
9 was given feedback and a chance to improve her  
10 performance before or if this was just a one-time --  
11 the only evidence I have that led to this whole  
12 thing is these 50 cases over a one-month period.

13 Q. And with respect to the time frame, the  
14 other studies that were done by other radiologists  
15 are from the same period, is that right?

16 A. I believe so. I think all the cases were  
17 from the same period.

18 Q. And you don't know when the review was  
19 performed, right? You know when the cases were  
20 from, but you don't know when the review was  
21 performed?

22 A. I don't know.

23 Q. You don't know how long it took to perform  
24 the review?

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1 A. No, I don't.

2 Q. You mentioned that in the -- in your  
3 report that it appears to be a hastily performed  
4 review. What makes you think it was hastily  
5 performed?

6 A. Because the cases were from a very small  
7 window of time. The -- I think it's obvious from  
8 what I said in my written opinions that there was  
9 nothing here that would warrant a termination.

10 I don't know anything about any --  
11 anything about these reports. There may be other  
12 factors here involved. I'm sure there are and I  
13 don't know any of those.

14 But to target a review this quickly, and I  
15 wasn't given any information about any of the other  
16 radiologists being subjected to the same peer review  
17 and the same type of action and feedback despite the  
18 fact their reports were actually worse, this  
19 looked like it was all thrown together in a fairly  
20 urgent basis without attention to what really  
21 qualifies as an objective peer review that's fair  
22 and across the board with everybody in the group and  
23 representative of, you know, many different types of  
24 cases and over a -- over a longer time period. You

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1 something dramatic and acute that must have  
2 happened, but I didn't see that in any of the  
3 reports that I got. That doesn't mean it didn't  
4 happen, but based on these 50 exams, I don't see  
5 anything here that would warrant a targeted, urgent  
6 review.

7 Q. And, again, other radiologists were  
8 included in the review as well, right?

9 A. Yes. I don't know how many.

10 Q. And so is it fair to say that the peer  
11 review process that you're referring to is something  
12 different than what this review would be?

13 A. It seems to me, yes.

14 Q. Okay. You don't know what UMass  
15 Memorial's peer review process is, right?

16 A. I don't. And I don't know if she's -- as  
17 I said, I don't know if she's had prior peer reviews  
18 that showed something or not. I -- I only have this  
19 50 cases.

20 Q. Okay. So is it fair to say that you don't  
21 really know what the methodology was for the review  
22 done by UMass Memorial?

23 A. That's correct.

24 Q. And you mentioned "the method of peer

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1 had that spreadsheet document that you had, right?

2 A. I don't know, and I don't know if she  
3 picked the cases or who picked the cases and how  
4 they -- you know, why they picked these. It's kind  
5 of a random sampling from a month's period of time.

6 And I don't know if Dr. Desai read every  
7 other case correctly or whether she actually made  
8 some substantial errors that didn't come through in  
9 this select group of cases. I can only comment on  
10 these 50.

11 Q. So you don't know whether the reviewer  
12 knew which ones were Desai's and which ones were  
13 not, right?

14 A. I don't know.

15 Q. So not -- not knowing anything about that,  
16 can you really say whether it was a fair process or  
17 not based on the information you have?

18 A. I can say it's not fair in the sense of,  
19 as I said, picking one narrow window of time, the  
20 limited number of cases and not really controlling  
21 for the complexity of the cases between the -- that  
22 Dr. Desai read versus others.

23 It's very easy to say you disagree with  
24 somebody's readings in complicated cases. It's

**EXHIBIT II**

**In the Matter of:**

*Charu Desai vs*

*UMASS Memorial Medical Center, Inc., et al.*

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*Charu S. Desai, M.D. Vol II*

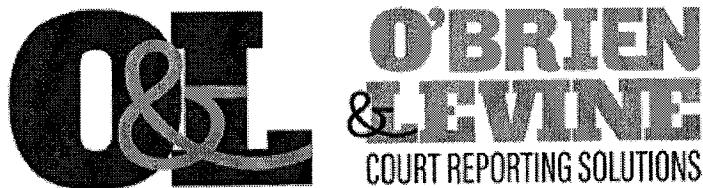
*October 22, 2020*

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1 justified. If it was not justified, that is a  
2 different story.

3 Q. But you don't know -- but you don't know  
4 what Dr. Dill's duties were, but you think she has  
5 to work the same location and hours as you?

6           A. I don't really know because I don't work  
7 with her. Right.

8 Q. Tell me the duties of the division chief in  
9 full, every duty she has.

10           A. It's not -- it's not my job to have the  
11 division chief duties.

12                   Q. Okay. So you don't know. Let's move to  
13 the next exhibit.

14           A. Yeah. I don't decide for her. Plus, she  
15        had -- she had an academic day once a week, and she  
16        also had an administrative day after five days, and  
17        then she's also covering in Shrewsbury, so sometimes  
18        she's doing the cardiac and all of that.

19 (Document marked as Exhibit 29  
20 for identification)

21 | BY MR. KILROY:

22 Q. I'm showing you Exhibit 29. It's a letter  
23 to you dated December 7, 2016.

24 A. Wait a minute. I don't have it.

**EXHIBIT JJ**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,  
Plaintiff,

v.

UMASS MEMORIAL MEDICAL  
CENTER, INC., et al.,  
Defendants.

**AFFIDAVIT OF  
JOSEPH FERRUCCI, M.D.**

I, Joseph Ferrucci, M.D., hereby depose and state as follows:

1. I served as Interim Chair of the UMass Memorial Medical Group Department of Radiology (the “Department”) from 2007 until 2012.

2. As Interim Chair, I created a policy for radiologists in the Department regarding taking call. Attached as **Exhibit A** is a copy of the policy, which has been revised since I originally created it.

3. Paragraph 5 of the policy has not been revised since I originally created the policy. I wrote Paragraph 5.

4. Paragraph 5 of the policy states:

Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:

- Age 72 years.
- Academic rank of full Professor
- 20 years of continuous service to the Department.

5. I wrote Paragraph 5 with the intent to exempt physicians from call if they met two of the three criteria listed, and I interpreted the policy accordingly.

6. To my knowledge, “senior attending” is not a term that is used for any other purpose in the Department, and physicians are not designated as “senior attending” for any reason that I am aware of. When I was Interim Chair, that term was not used for any other purpose.

7. While I was Interim Chair, I never had a policy or practice of offering the role of Chief of a Division to the most senior physician in the division. I made decisions regarding the selection of Division Chiefs based on who was the best person for the job, considering a variety of factors to determine who would best serve the needs of the Department and in the particular subspecialty.

8. I served as the Chair of the Department of Radiology at Boston University from 1992 to 2004, and in that role, I never had a practice of automatically offering division chief roles to the most senior physician in the division.

Signed under pains and penalties of perjury this 2 day of March 2022.



Joseph Ferrucci, M.D.

**EXHIBIT A**

Revised October 2015

## **CALL AND/OR WEEKEND/HOLIDAY COVERAGE POLICY**

### **PRINCIPLES**

1. Call and/or Weekend/ Holiday Coverage is Division based.
2. The frequency of call and/or Weekend/Holiday duties will be maintained at approximately 1/5 or roughly 10 to 11 weeks or weekends per year. Minor adjustments may be necessary from time to time for Divisions temporarily under or overstaffed at the discretion of the Chair's Office.
3. WRVU's earned during call or weekend/holiday obligation will count for yearend productivity calculation.
4. Call and weekend/holiday schedule will be made by the Division Chief in concert with the Physician Staffing Coordinator. When possible call/weekend/holiday schedule will be done one year in advance at the beginning of each Fiscal Year and follow Departmental guidelines.
5. Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:
  - Age 72 years.
  - Academic rank of full Professor
  - 20 years of continuous service to the Department.

**WEEKEND AND HOLIDAY COVERAGE – 1/5**

**ABDOMINAL IMAGING DIVISION – ON SITE MEMORIAL CAMPUS**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Memorial House Doctor - Contrast Coverage, emergent US and Fluoro  
Responsible for any NVIR procedures at Memorial Campus.  
On Site Chest person will be back-up House Doctor.

Reading Assignments

Adult non ED Abdominal Imaging – All locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not Campus))

**MSK DIVISION – ON SITE SHREWSBURY STREET**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Contrast Monitoring – Shrewsbury Street MR

Reading Assignments

Adult non ED MSK imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

**CHEST DIVISION – ON SITE – MEMORIAL CAMPUS**  
**8A-5P – SATURDAY/SUNDAY/HOLIDAY**

**ASSIGNMENT RESPONSIBILITIES**

Reading Assignments

Adult non ED CHEST imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

**SATURDAY COVERAGE (12/YEAR)**

BREAST DIVISION – ON SITE- MEMORIAL CAMPUS  
8 HOUR SHIFT- with FELLOW

ASSIGNMENT RESPONSIBILITIES: Screening

**CALL 7 DAYS - FRIDAY 5 PM TO FRIDAY 8 AM INCLUDING ON-SITE SAT/SUN/HOLIDAY – 1/5**

PEDIATRIC DIVISION – ON SITE – UNIVERSITY CAMPUS  
8A-5P – SATURDAY/SUNDAY/HOLIDAY  
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)  
All Pediatric Imaging –all locations

Priority

- a. ED-Pedi (Read out resident)
- b. Stats
- c. Inpatient
- d. Carewell Urgent Care: read all prior day's cases, be available for STAT calls
- e. Outpatient

(Each category Prioritized by Date and Time (not location))

NEURORADIOLOGY DIVISION – ON SITE – UNIVERSITY CAMPUS  
8A-5P – SATURDAY/SUNDAY/HOLIDAY  
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)  
All Neuroradiology Imaging –all locations

Priority

- Read out resident
- a. ED-Neuro
- b. Stats
- c. Inpatient
- d. Outpatient

(Each category Prioritized by Date and Time (not location))

**CALL (7 DAYS) ONLY**

VASCULAR DIVISION –ON CALL FOR VIR AND ABDOMINAL\* PROCEDURES  
CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)  
\*All Abdominal Procedures EXCEPT Memorial Campus Saturday/ Sunday/  
Holiday 8A-5)

NEURO INTERVENTIONAL DIVISION –ON CALL FOR PROCEDURES  
CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

**ED Division- ON SITE- University Campus 24/7**

**Mon-Fri Shifts**

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro) Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

- Priority
- a. ED
- b. STATs- All non-neuro including non-ED
  - i. Inpatient
  - ii. Outpatient

*Pediatric cases will be entered as Preliminary by ED resident*

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

- Priority
- a. ED
- b. STATs- All non-ED STATs including Neuro
  - i. Inpatient
  - ii. Outpatient
  - iii. Other backlog in non-STAT, non-ED cases

*Pediatric cases will be entered as Preliminary by ED resident*

*Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only*

**Sat/Sun/Holiday**

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

- Priority
- a) ED
- b) STATs- All non-ED STATs including Neuro
  - i. Inpatient
  - ii. Outpatient
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